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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/299,684	04/26/1999	NINA T. BHATTI	10982229-1	3580

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FORT COLLINS, CO 80527-2400

EXAMINER
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BIAGINI, CHRISTOPHER D

ART UNIT	PAPER NUMBER
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2142

MAIL DATE	DELIVERY MODE
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09/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/299,684

Applicant(s)

BHATTI ET AL.

Examiner

Christopher D. Biagini

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                           | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## DETAILED ACTION

### *Response to Remarks/Arguments*

The amendment to claim 9 is sufficient to overcome the rejection of claims 9-12 and 15 under 35 USC 112, second paragraph. Accordingly, the rejection is withdrawn.

As to the arguments regarding the rejection of claims 1-12 and 15 under 35 USC 103, the arguments have been fully considered but are not persuasive.

In response to the argument that "Mogul [US Patent 6,234,761] does not teach or suggest storing each content file in a full content format and an adapted content format, which is less resource-intensive," the Examiner respectfully disagrees. Mogul teaches that the server can provide either "a large, high-resolution, full-color version" or "a very small 'thumbnail sketch'" of images (see col. 5, lines 58-67). Therefore, the server *must* store both the full content format (such as a high-resolution, full-color image) and an adapted content format which is less resource-intensive (such as a very small thumbnail), even if only temporarily. Furthermore, it is noted that although specific citations may be provided as a guide, the test of obviousness under 35 USC 103 is what the combined teachings of the references would have suggested to those of ordinary skill in the art.

In response to the argument that Mogul does not teach or suggest "an adaptive load control system which modifies an access request address to access the adapted content format when a server is in an overload condition," the Examiner respectfully

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disagrees. Mogul teaches modifying an access request address to access the adapted content format, since the server provides content files in either a full content format or an adapted content format as inserts in a web page (see col. 5, lines 58-67), and inserts in a web page are specified by access request addresses (i.e., URLs, as described on col. 5, lines 13-17). Mogul further teaches that the modification occurs based on whether the server is in an overload condition (see col. 4, lines 28-30 and col. 9, lines 52-53). Therefore, the server modifies an access request address to access the adapted content format when a server is in an overload condition.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mogul et al. (US Pat. No. 6,243,761, hereinafter "Mogul") in view of Abbott et al. (US Pat. No. 6,314,463, hereinafter "Abbott").

Regarding claims 1 and 9, Mogul teaches a computer network that varies the quality of data transmitted. Mogul teaches a content server that stores files for external access (col. 5, lines 5-8), storing or creating data files that are less resource intensive (col. 5, lines 46-57 and col. 2, lines 19-23) that are stored in a full content and adapted

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content form (col. 5, lines 58-67 and col. 2, lines 4-8). Mogul further teaches an adaptive load control system to pass requests to the server (col. 5, lines 46-59), modifying an access request address (col. 5, lines 40-57 and col. 7, lines 26-28) to instead obtain an adapted content by legacy addresses or dynamically as "by automatically varying the layout of 'content' in response to recent information about network conditions" (col. 9, lines 57-58), and when the server is overloaded as "the effective bandwidth can also depend on server loads" (col. 9, lines 52-53), "download time" (col. 9, line 63), and "monitoring includes measuring the server load of the server" (col. 10, lines 53-54). Mogul further teaches monitoring the response time of the server (col. 10, lines 49-50).

Mogul does not teach a load monitor that monitors the load condition of the content server without requiring monitoring of the network, said load monitor establishing the load condition of said content server by measuring an amount of time between when the content server receives the external access request and when the content server provides the external access request.

Abbott teaches a load monitor (web server interface 104) that monitors and determines the load condition of a content server (web server 102) without requiring monitoring of the network (note that web server 102 provides timing information to web server interface 104 directly at the beginning and end of processing, so web server interface 104 has no need to monitor the network: see col. 15, lines 7-13), said load monitor establishing the load condition of said content server by measuring an amount of time between when the content server receives an external access request and when the content server provides the external access request (see col. 10, line 65 to col. 11,

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line 3; col. 10, lines 44-47; and col. 15, lines 7-13). It would have been obvious to one of ordinary skill in the art to modify the invention of Mogul with the load monitoring system taught by Abbott in order to measure server response time without the measurement being skewed by varying network performance (see Abbott, col. 1, line 66 to col. 2, line 5).

Regarding claims 2 and 10, the combination of Mogul and Abbott teaches the limitations of claims 1 and 9 as applied above, and further teaches transmitting full content when the server is not overloaded (see Mogul, col. 5, lines 58-61 and col. 6, lines 33 and 42).

Regarding claims 3, 11, and 15, the combination of Mogul and Abbott teaches the limitations of claims 1 and 9 as applied above, and further teaches determining load condition within the content server (see element 200 in Fig. 1 of Mogul) and transmitting adapted content when the server is overloaded (see Mogul, col. 5, lines 62-64 and col. 6, lines 33 and 42).

Regarding claim 4, the combination of Mogul and Abbott teaches the limitations of claim 3 as applied above, and further teaches adapting the content based on the load (Mogul, col. 7, lines 34-37) dynamically, or providing an address to the dynamically generated content (Mogul, col. 2, lines 4-18).

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Regarding claim 5, the combination of Mogul and Abbott teaches the limitations of claim 4 as applied above, and further teaches a predetermined load value of the server to compare to determine if the server is overloaded, as based on the load limits, the download time can be adjusted, since load values are directly related to download time (see Mogul, col. 7, lines 48-52 and/or "threshold," col. 6, line 37).

Regarding claim 6, the combination of Mogul and Abbot teaches the limitations of claim 3 as applied above, and further teaches instead transmitting full content when the server is not overloaded (see Mogul, col. 5, lines 58-61 and col. 6, lines 33 and 42).

Regarding claims 7 and 12, the combination of Mogul and Abbot teaches the limitations of claims 1 and 9 as applied above, and further teaches modifying a URL access request for content (see Mogul; col. 2, lines 10-19 and col. 9, line 41).

Regarding claim 8, the combination of Mogul in view of Abbot teaches the limitations of claim 1 as applied above, and further teaches that the server includes a service directory or index or library or database that directs the access request to the corresponding "annotated page" or format (see Mogul, col. 9, lines 38-39).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Biagini whose telephone number is (571) 272-9743. The examiner can normally be reached on M-R 7:30-5, 7:30-4 alternate Fridays.

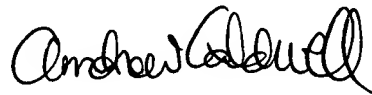
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher Biagini  
(571) 272-9743

A handwritten signature in black ink, appearing to read "Andrew Caldwell", with a stylized, cursive script.

ANDREW CALDWELL  
SUPERVISORY PATENT EXAMINER